

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JON CAVALIER, JR.,)	
)	
Plaintiff,)	
)	
v.)	Case Number: 13-CV-651-FHM
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	

OPINION AND ORDER

Plaintiff seeks an award of attorney fees in the amount of \$3,527.40 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. [Dkt. 19]. The Commissioner does not oppose a fee award but does object to the hourly rate of fees sought. The Commissioner argues that any award for fees should be reduced by \$49.20. [Dkt. #20].

Plaintiff submitted a stipulation letter from the Social Security Office of the General Counsel which indicates the maximum hourly rate for 2013 is \$186 per hour. Fees for 2014 and 2015 are not addressed in this letter. [Dkt. 19-3]. Plaintiff calculated attorney fees for work performed in 2014 and 2015 at an hourly rate of \$190. [Dkt. 19-1, 19-2]. The Commissioner contends that Plaintiff did not sufficiently justify the rate increase. Plaintiff did not reply to the Commissioner's objection to the \$190 rate. There being no justification for that rate, the court has reduced the fee award to reflect a rate of \$186 per hour.

The court finds that Plaintiff should be awarded EAJA fees in the amount of \$3,478.20.

The EAJA statute provides for payment of fees to the prevailing party, here Plaintiff. 28 U.S.C. § 2412 (d)(1)(A). The Tenth Circuit has ruled that the term “prevailing party” refers to Plaintiff, not the attorney. *Manning v. Astrue*, 510 F.3d 1246 1255(10th Cir. 2007). Pursuant to the Commissioner’s usual practice, the check should be made payable to Plaintiff and mailed to counsel’s address. If Plaintiff’s attorney receives the fees awarded herein and attorney fees are also awarded and received by counsel under 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

Plaintiff’s Motion for Attorney’s Fees Pursuant to the Equal Access to Justice Act, [Dkt. 19], is GRANTED as provided herein.

SO ORDERED this 9th day of April, 2015.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE